

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MAX E. SILVER,

Plaintiff,

v.

CIVIL ACTION NO. 1:06CV70
(Judge Keeley)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on May 10, 2006, the Court referred this Social Security action to United States Magistrate John S. Kaull with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On July 17, 2006, the Court granted the Commissioner's motion to remand for further proceedings. On September 21, 2006, the Court granted the plaintiff's motion to vacate its July 17, 2006 order and again referred the case to United States Magistrate John S. Kaull for proposed findings of fact and recommendation for disposition.

On May 21, 2007, Magistrate Judge Kaull filed his Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation and further directed the parties that failure to file objections would

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result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

Upon consideration of the Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts and approves the Report and Recommendation. Therefore, it is

ORDERED That Magistrate Judge Kaull's Report and Recommendation/Opinion is accepted in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

1. The plaintiff's motion for Summary Judgment (Docket No. 18) is **GRANTED-IN-PART**;
2. The defendant's motion for Summary Judgment (Docket No. 22) is **DENIED**;
3. The plaintiff's claim is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. §§ 504(g) and 1383(c)(3) for further proceedings consistent with the recommendations mad by Magistrate Judge Kaull in his May 21, 2007 report and recommendation; and

¹ The failure of the parties to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58. If a petition for fees pursuant to the Equal Access to Justice Act (EAJA) is contemplated, the plaintiff is warned that, as announced in Shalala v. Schaefer, 113 S.Ct. 2625 (1993), the time for such a petition expires ninety days thereafter.

The Clerk of the Court is directed to transmit copies of this Order to counsel of record.

DATED: June 6, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE